

FOCUS

Analysis, Commentary and Updates on Legislative and Policy Issues that Affect California Cities

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Priority Focus will not publish the next two weeks. The next issue of *Priority Focus* will be available on January 5.

FEDERAL UPDATE

On December 8, Congress passed and the president signed into law, H.J. Res 102 - a continuing resolution (CR), which will fund all federal programs that were not enacted through annual appropriations bills by October 1, 2006 (the beginning of FY 2007). The effect of the resolution is to continue funding for these programs at the FY 2006 level. *For more, see Page 4.*

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FEDERAL COMMUNICATIONS COMMISSION TO VOTE ON CABLE FRANCHISING

In the aftermath of Congress' inaction last year in telecommunications reform, the Federal Communications Commission (FCC) appears poised to issue its own ruling in this area on December 20.

The FCC signaled its interest in this area in November 2005, when the agency issued a notice of proposed rulemaking requesting comments on the local cable franchising process and its applicability to new entrants—particularly phone companies with facilities already in the public rights of way.

For more, see Page 5.

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CALIFORNIA – 'THE SUBMARINE?'

Governor, California Delegates, Call for Designation

Gov. Arnold Schwarzenegger, along with members of the California Congressional Delegation, have sent letters to the Secretary of the Navy, requesting that the next Virginia class attack submarine be named the U.S.S. California. *For more, see Page 3.*

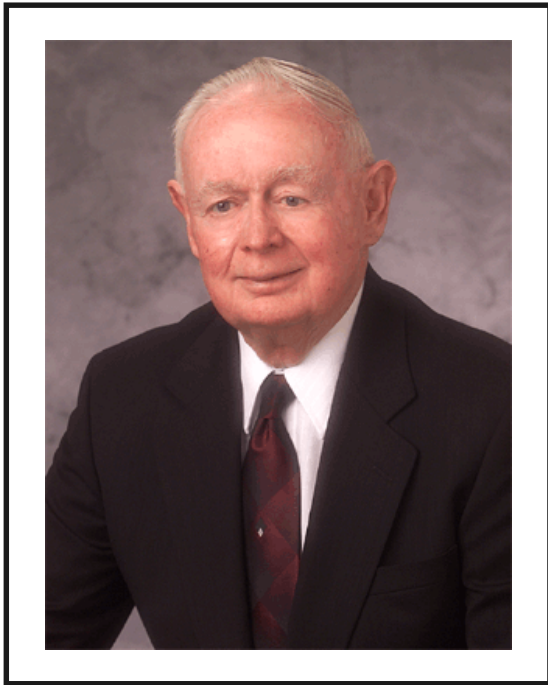
IN THIS ISSUE:

Page 2 KEEPING UP: DAN CURTIN (1933-2006)

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KEEPING UP: DAN CURTIN (1933-2006)



The League of California Cities lost a true friend last week with the passing of Dan Curtin. Dan was the official “Dean” of planning and land use in California (The University of California, Irvine, actually bestowed this honorary title on Dan in 1985). Indeed, it would be hard to find a city attorney, planner, or land use professional who had not consulted one his publications or attended one of his seminars.

Dan’s contributions to the field of land use and planning law are innumerable. Dan was among the first to specialize and define the practice area. The binder that he prepared for the classes he would teach in the 1970s became the basis for the *Curtin’s California Land Use and Planning Guide*. That book—which has been updated annually and in its 26th edition—remains a “must-have” desk reference because it so clearly lays out the system that Dan personally developed for understanding and implementing land use law.

More than anyone, Dan shaped the general plan as the center point for land use decision-making. In *Leshner Communications v. City of*

Walnut Creek, the California Supreme Court adopted Dan’s phrase that describes the general plan as the “constitution for all future development.” Several years later, in *DeVita v. County of Napa*, the court accepted the notion of “vertical consistency” that Dan had been teaching for years: that all key development decisions must be consistent with the general plan.

Dan also taught that cities and counties have broad authority to promote the public welfare. He brought this issue to life in memorable ways. For example, when he discussed the seminal case of *Ewing v. City of Carmel-by-the-Sea* (involving an ordinance prohibiting short term residential rentals), he quoted the trial court judge to highlight the point that courts should defer to local decisions:

“I think this is a terrible law, but I’m only a lowly judge – I don’t have the policy-making authority that the city council has.”

The take-home message to countless planning commissioners and council members was clear: you have all the power you need to promote your city’s vision if you’ll use it. (This is when he would say, “It’s like Dorothy in the Wizard of Oz: you had the power all along.”)

Dan’s career started in the California Legislature where he served as counsel for the Assembly Committee on Local Government in 1959. He then joined the city attorney community, serving four years as the deputy city attorney for Richmond (1961-1965) and 17 years as city attorney for Walnut Creek (1965-1982). Dan was the League’s City Attorney Department president in 1973 and served on the League’s board of directors. Dan also helped found and served on the first legal advocacy committee, which has met continuously ever since. In 1986, the League officially recognized his years of service and contributions to planning in California cities at its annual conference.

Continued on Page 3

CURTAIN from page 3

When Dan joined the firm (now known as Bingham McCutchen in 1983) he retained his ability to see the local government's perspective. Ever the gentleman, he treated clients and adversaries alike with respect. He also continued to elevate the professionalism and stature of the municipal law by his extensive contributions to educational seminars and publications. By this time, his expertise and achievements were being recognized nationwide. Dan received several prestigious awards, including:

- The Jefferson Fordham Lifetime Achievement Award from the Section of State of Local Government Law, American Bar Association, 2003
- The Charles S. Rhyne Award for Lifetime Achievement in Municipal Law from National Institute of Municipal Law Officers (now the International Municipal Lawyers Association or IMLA), September 1992
- The National Distinguished Leadership Award - American Planning Association, 1988

Dan also traveled throughout the world — including Albania, Hungary, Australia, Ireland and China—providing expertise in land use law to the international community, particularly to countries struggling to transition into democracy. Through the World Jurist Association, he promoted the rule of law to the international community during the association's biennial international conferences. He was also an active participant in the American Bar Association's Central and Eastern European Law Initiative, set up to promote law reform in emerging governments.

But Dan's lasting professional legacy truly rests with his peers who loved and respected him. Dan was a mentor and a friend to two generations of land use professionals. He reveled in mentoring young attorneys and planners and making them feel part of his circle. He would take an interest in their careers and go out of his way to cite their work. Dan made his numerous friends feel like they were the most important person in his life. He loved hosting dinners at conferences and hearing

about everyone's practices and his invitees relished the heady conversations and the wisdom he could share. His gracious, old-school style of lawyering and living—always courteous, respectful, and inquiring about family—will be enormously missed.

The state of California is fortunate that Dan Curtin was so generous with his talent and shared his knowledge so freely. He trained countless lawyers, planners, commissioners, and elected officials. Many have asked, "who will replace him?" The answer is that this responsibility falls upon us all. He was a moral compass for the legal and planning profession. And now we must make our way without him.

Donations in the memory of Dan Curtin may be sent to the Missionary Sisters of the Eucharist, P.O. Box 88147, Houston, Texas, 77288, to assist in the education of the young Mayan Indian Community. Donations may also be sent to Maryknoll Fathers and Brothers, P.O. Box 304, Maryknoll, N.Y., 10545-0304.

..... U.S.S. CALIFORNIA from page 1

Currently there are two new Virginia-class submarines, SSN-780 and SSN-781, which have been ordered but not named. Today there is no active vessel in the U.S. Navy named after the state of California.

The most recent U.S.S. California (CGN-36) was retired in 1971. The vessel was the lead ship of its class of nuclear-powered guided missile cruisers, and was known as the "Golden Grizzly" in recognition of the grizzly bear on the California State Flag.

Copies of the Governor's letter and the delegation's letter are available at www.cacities.org/federal.

FEDERAL UPDATE from page 1

Defense and Homeland Security Appropriations are not covered under the CR, as Congress passed the FY 2007 spending bills shortly before adjourning to campaign for the November 2006 elections. The CR will extend federal funding for the remaining federal programs through February 15, 2007, at the lowest of the House-passed or FY 2006 spending levels.

An exception is the Labor-HHS-Education spending measure (H.R. 5647). Since the bill has not passed in the House or the Senate, funding for the programs covered by that bill will be left at the FY 2006 level.

In an effort to expedite consideration of the remaining FY 2007 appropriations bills, the incoming House and Senate Democratic Leadership recently announced their plan to pass a year-long joint resolution early in the 110th Congress. The resolution would enable Congress to fund at a fixed level those Federal programs currently not provided FY 2007 funding in the remaining 10 appropriations bills.

Incoming House and Senate Appropriations Committee chairmen have indicated that they will make "limited adjustments" to these programs, but that the extended version would have none of the earmarks contained in the remaining FY 2007 spending bills. The new Democrat-led Congress hopes to conclude work on the FY 2007 measures before the White House releases its FY 2008 budget proposal in early February 2007.

Water Projects Bill Awaits Action in Post-Election Session

House and Senate conferees failed to reach agreement on the long-awaited reauthorization of the Water Resources Development Act (WRDA) prior to adjourning the 109th Congress. The bill would have authorized the Army Corps of Engineers to undertake hundreds of navigation, flood control, dredging and other water projects.

Conference discussions stalled over how projects are reviewed and approved, and what oversight should be imposed on the Corps. Similar disagreements have stalled efforts to pass a water projects authorization bill for several years. No water projects authorization bill has been enacted since 2000 (PL 106-541). The House and Senate will now be tasked with developing new WRDA bills in the 110th Congress.

California Congressional Delegation Leadership and Committee Changes

Over the past several weeks, incoming House Democratic leaders have begun to organize committee assignments for their membership for the upcoming 110th Congress. The reorganization places several Californians in key positions on a variety of committees.

The House Education and the Workforce Committee will remain under California leadership, however current committee Chairman Howard P. "Buck" McKeon (R-Santa Clarita) will become the committee's ranking member, while the committee's current ranking member George Miller (D-Richmond) will take over as the committee's chairman. California Members will also gain chairmanships on the House Government Reform and International Relations committees, with Representatives Henry Waxman (D-Los Angeles) and Tom Lantos (D-San Mateo) chairing those committees respectively.

The House Appropriations Committee will welcome three new Californian Democrats—Representatives Barbara Lee (Oakland), Adam Schiff (Burbank), and Mike Honda (San Jose). They will join Reps. Sam Farr (Carmel) and Lucille Roybal-Allard (Los Angeles), raising California's Democratic membership of the key Federal spending panel from two to five.

On the Republican side, current Appropriations Committee Chairman Jerry Lewis (Redlands) will move into the ranking member

Continued on Page 5

FEDERAL UPDATE from page 4.....

position in the 110th Congress, and Congressman John Doolittle (Granite Bay) is expected to remain on the Committee.

Several Californians have also been selected to serve on the Democratic Steering Committee, including Representatives George Miller, who will serve as the committee's policy co-chair, Hilda Solis (El Monte), who will serve as the committee's vice chair, Loretta Sanchez (Garden Grove), Mike Thompson (Napa), Dennis Cardoza (Merced) and Doris Matsui (Sacramento). Incoming Majority Whip James Clyburn (D-SC) has also selected California Congresswoman Maxine Waters (D-Los Angeles) to join his Whip operation.

Other Californians with new committee assignments include Representatives Jane Harman (D-El Segundo) and Grace Napolitano (D-Santa Fe Springs). Congresswoman Harman will leave her post as the ranking member on the House Permanent Select Committee on Intelligence to join the Energy and Commerce Committee, and Congresswoman Napolitano will become the chair of the Resources Committee's Water and Power Subcommittee and gain a seat on the Transportation and Infrastructure Committee. Current House Administration Committee Ranking Member Juanita Millender-McDonald (D-Torrance) is expected to become the chair of the committee when Congress reconvenes in January.

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FCC from page 1

FCC Commission Chairman Kevin J. Martin has scheduled a vote at or before the FCC's December 20 meeting to adopt new rules governing local cable franchising.

The League submitted comments to the notice this past February, as did several national local government organizations and various municipalities nationwide. The FCC sought information about whether the current local cable franchising process "unreasonably impedes" the cable competition and broadband deployment goals of the FCC, and if so, what it should do to address the problem.

A letter to the FCC from the U.S. Conference of Mayors, National Association of Counties, National League of Cities, and National Association of Telecommunications Officers and Advisors challenging the FCC's authority to pre-empt local video (cable) franchising authority is available at www.cacities.org/telecom.

The letter highlights the following key points:

- Title VI of the Communications Act does not provide sufficient, if any, legal authority for the commission to take action in changing the way cable franchises are granted without explicit congressional approval. The commission does not have the authority to dictate the terms and conditions of franchises given by local franchising authorities.
- Title VI does not permit a fixed deadline on local franchise authority action. A fixed deadline would provide no incentive for new providers to work toward a local franchise agreement because they would have access to the public right of way without local oversight if they simply wait out the timeframes.
- The order would require the cost of any in-kind benefits, such as I-Nets, as well as any monetary payments other than the franchise fee, to be offset against the 5 percent franchise fee. This would be a significant net fiscal loss to the local franchising authority. The "franchise fee" definition in the Cable Act does not include in-kind services or facilities, and it also does not include monetary payments for PEG capital facilities and equipment (including I-Net facilities) or monetary payments incidental to the award or enforcement of the franchise.
- The "build-out" requirements in the draft order do not protect the interests of all customers in a local franchising area. Competition is good when everyone can benefit, not just a privileged few. Local franchising authorities have effectively managed build-out in their respective jurisdictions without hindering the deployment of broadband services.

The League will continue to monitor the situation in Washington D.C. and will provide more information as soon as it is available.